

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Vishram & Anr. Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.672/2005)

D.B. Criminal Appeal under Section 374(2)
Cr.P.C. against the judgment dt.02.09.2005
passed by the Additional Sessions Judge (Fast
Track), Dungarpur in Sessions Case
No.07/2005 (04/2005).

Date of Judgment: September 11, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Shambhu Singh, for the appellants

Mr.J.P.S.Choudhary, Public Prosecutor

BY THE COURT: (PER HON'BLE MR.MATHUR J.)

REPORTABLE/-

1. The short question arises for consideration in the instant appeal is whether the conviction of the appellants Vishram and Jeeva based on hearsay evidence is justified ? The learned Additional Sessions Judge (Fast Track) Dungarpur by judgment dated

2.9.2005 has convicted the appellants Vishram and Jeeva of offence under Section 302 & 302/34 I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs.2000/-; in default of payment to further undergo six months' rigorous imprisonment.

2. The prosecution case as emerged during the trial is that deceased Manji was a vegetable seller. There was unpleasantness between Manji and appellant Vishram on account of an incident alleged to have taken place 15 years back. On the date of occurrence, while returning from Bichhiwada he visited the house of second appellant Jeeva. The appellant Vishram also joined them. Some oral altercation took place between them, in which the appellant Vishram alleged to have assaulted deceased Manji. The occurrence was reported by appellant Jeeva to P.W.6 Ranchore the son of deceased Manji, who in turn informed P.W.1 Magan Lal. The First Information Report of the occurrence was lodged by P.W.1 Magan Lal at Police Station, Bichhiwada on 7.9.2004. On the basis of said information police registered a case for offence under Section 307 I.P.C. and proceeded with investigation. The injured Manji was initially examined by P.W.16

Dr.B.P.Verma. He prepared the injury report vide Ex.P21. However, he advised to take him to the Hospital at Dungarpur. From Dungarpur he was removed to Ahmedabad. He breathed his last while under treatment at Civil Hospital at Ahmedabad on 26.9.2004. The hospital authorities informed P.W.13 Praveen Chandra, Head Constable, at Shahibagh Police Station, Ahmedabad. The information was given to the concerned Police Station and as such offence under Section 302 I.P.C. was added. The autopsy on the dead body of deceased Manji was conducted by P.W.12 Dr.Rajendra Kumar vide Ex.P10. He noticed the following injuries:

- (1) Healed stitched wound 5 cm long over left parietal of head.
- (2) Surgical stitched wound of 18 cms long over right parietal of head. Semi circular in shape.
- (3) Surgical tracheotomy wound of 2 x 1 cm x trachea deep over anterior aspect of base of neck.
- (4) Bed sore of 6 x 3 cm over right back.
- (5) Bed sore of 6 x 6 cm over mid back.

In his opinion the cause of death was head injury. After usual investigation police laid charge-sheet against appellant Vishram and Jeeva under Sections

302, 302/34 & 341 I.P.C.

3. P.W.1 Magan Lal deposed that on the next day of the occurrence Kana and P.W.6 Ranchore visited his house and disclosed that while his father was returning from Bichhiwada after selling vegetables, he stayed at the house of Jeeva, where Vishram was already sitting. Jeeva and Vishram belaboured with him. The condition of his father was serious. He also deposed that the injured was taken to the Bichhiwada Hospital from where he was referred to Dungapur. From Dungarpur Hospital he has been referred to Ahmedabad. On the basis of information given by Ranchore he submitted a written report Ex.P2 at the Police Station in the cross examination, he admitted that the source of the information of the occurrence was Jeeva. He stated,

" रणछोड़ ने मुझे बताया था कि सुबह 4-5 बजे सूचना जीवा ने दी है। रणछोड़ ने मुझे बताया था कि सूचना मिलने के बाद मैं मोतबिरान के घर गया था। "

4. P.w.6 Ranchore the son of the deceased deposed that the appellant Jeeva visited his house and informed that his deceased father Manji was returning from

Bichhiwada after selling vegetables stayed at his (Jeeva's) house. The appellant Vishram was already at his house. Both of them belaboured with him as a result of which he sustained serious injuries and he was lying injured in his house. The statement of P.W.2 Bada is almost on the same line. He deposed that he was informed by Ranchore about the incident which took place at the house of Jeeva in which his father Manji sustained injuries. He also stated that the source of information of Ranchore was the information given by Jeeva.

5. P.W.3 Soma stated that on the date of occurrence while he was in the company of deceased Manji while returning from Bichhiwada on the way he went to the house of Jeeva. On the next day he heard that Manji was being belaboured by Vishram and Jeeva. The statement of P.W.5 Hurji is almost on the same line. He also stated that he re-heard about the incident from P.W.6 Ranchore. The statement of P.W.7 Kali is almost on the line of P.W.3 Soma. The statement of P.W.8 Soma S/o Bada is also almost on the line of P.W.3 Soma. He stated that having heard about the incident he visited the place of occurrence. He was told by Jeeva

that vishram has belaboured with Manji.

6. P.W.10 Smt.Varju is the wife of deceased Manji. She deposed that her husband had gone to Bichhiwada for selling vegetables. He did not return to the house during the night. In the next morning Jeeva and his wife visited the house. The appellant Jeeva informed that Vishram assaulted her husband Manji. She along with other prosecution witnesses went to the place of occurrence and found her husband lying injured. On inquiry, Jeeva disclosed that it was Vishram who had assaulted Manji. P.W.11 Nana has not supported the prosecution case and as such he has been declared hostile. P.W.14 Sawai Singh is the Investigating Officer. He has given the details of the investigation. P.w.4 Lala, P.W.9 Jeeva and P.W.15 Parbat Singh are the formal witnesses.

7. The police has also adduced evidence of recovery of lathi. The appellants were arrested vide Ex.P6 & Ex.P7. In pursuance of the information Ex.P19 a lathi was recovered vide Ex.P4. The police has not placed on record the report of the Forensic Science Laboratory to show that the lathi was stained with human blood.

Thus, this evidence cannot be used as incriminating circumstance against the appellants.

8. The statements of some of the witnesses show that appellant Jeeva made a statement to the effect that Vishram had belaboured deceased Manji. This sort of exculpating statement is not admissible in evidence. Jeeva is the accused in the case.

9. The law of evidence is the most important branch of adjunctive law. The object is to prevent laxity in the admissibility of evidence, and to introduce a correct and uniform rule of practice. The main principles which underline the law of evidence are:-

- (i) the evidence must be confined to matter in issue;
- (ii) hearsay evidence must not be admitted;
- and
- (iii) the best evidence must be given in all cases.

10. In the instant case, the evidence as given by the prosecution witnesses namely P.W.1 Magan Lal, P.W.6 Ranchore, P.W.10 Smt.Varju and other witnesses is that

they came to know about the occurrence from the mouth of Jeeva. Thus, there is no evidence of occurrence. The evidence is in the nature of hearsay. It is not admissible in evidence. The learned trial court has committed manifest error in convicting the appellants on the basis of hearsay evidence.

11. Consequently, the appeal is allowed. The judgment of the Additional Sessions Judge (Fast Track) Dungarpur dated 2.9.2005 is set aside. The appellant Vishram S/o Dalla is acquitted of offence under Section 302 I.P.C. He is in jail. He shall be released forthwith, if not required in any other case. The appellant Jeeva S/o Dolla is acquitted of offence under Section 302/34 I.P.C. He is on bail. His bail bonds stand discharged.

(R.P. VYAS), J.

(N.N.MATHUR), J.

BKS/-